

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.4365 of 2013 (O&M)
Date of Decision:24.12.2014

M/s Nikka Mal Jewellers and others

....Appellants

Versus

Ashok Jain and others

....Respondents

CORAM: HON'BLE MS. JUSTICE NAVITA SINGH

Present: Mr. Ajay Sahni, Advocate for the appellants.

Mr. Kamal Kishore Arora, Advocate,
Mr. Gaurav Arora, Advocate and
Mr. Himanshu Arora, Advocate for the respondents.

NAVITA SINGH, J.

1. The appellants filed his suit for permanent injunction for restraining the respondents from infringing the registered trade mark of the appellants and in that they sought temporary injunction. However, their application under Order 39 Rules 1 and 2 of the Code of Civil Procedure was dismissed. Hence this appeal.
2. The case of the appellants was that they were registered as 'NIKKAMAL' with logo 'NM' under the Trade Marks Act (Act for short) and the respondent started the business under the name and style 'NIKKA MAL PYARE LAL JEWELLERS', which was affecting the business of the appellants. The respondents came in the field and soon thereafter notice dated 18.5.2011 was issued by the appellants but the respondents did not refrain from using the similar and deceptive name and trade mark, which included the name of NIKKAMAL for which reason the public thought that both the businesses belong to the same firm.
3. Learned counsel for the appellants argued that as per the agreement of dissolution of partnership which was made on 31.7.1958, the name

and goodwill of the jewellery business style as M/s Jamna Dass Nikka Mal along with all assets, properties and liabilities was to be retained by the appellants and likewise the assets, properties and liabilities in the name or goodwill of the business style as M/s Nikka Mal Pyare Lal Jain for textiles was to be retained by the respondents at the relevant time. Ved Parkash Jain was one of the partners who was predecessor of the respondents while Hira Lal, Sukhdev Rai and Satya Pal were on the other side and Hira Lal was ascendant of the appellants. It was agreed vide the said dissolution deed that M/s Jamna Dass Nikka Mal would be in the jewellery business and the other party would be in the textile line. It was contended that for running the business of jewellery, the word 'NIKKAMAL' could not have been used by the respondents as it shadowed goodwill of the appellants who were Nikka Mal Jewellers and had business running into hundreds of crores.

4. It was also argued on behalf of the appellants that the respondents were their cousins and were also employed in the common business earlier and they knew all the trade secrets. They with malafide intention put up jewellery business next to the appellants with a similar name so as to deceive the public. Even the words 'FAMILY JEWELLERS' were used by the respondents as were being used by the appellants.

5. Learned counsel for the respondents, on the other hand, argued that a bare look at the name and logo of both the parties showed that there was no similarity, much less deceptive one. The respondents were running business in the name of Nikka Mal Pyare Lal Jain with a different logo while the appellants were Nikka Mal Jewellers, their logo being entirely different. There was no such similarity in the trade mark of both so as to cause any confusion in the mind of the customers.

6. Learned counsel for the respondents then argued that for the purpose of purchasing jewellery it is the elite class which would go to the appellants or the respondents and such class of people being educated and literate, cannot be deceived by the two names which are written in a different manner with different logo. This argument, however, cannot be accepted because it is not only the elite class which would visit the shops of the parties but also people who may have lot of money but not enough education. Say, an agriculturist coming from a village may want to buy good and expensive jewellery from either of the parties but may not even be able to read the names as such if printed in English. If the word 'NIKKAMAL' is written in both the names in similar fashion then even though the words 'Pyare Lal Jain' may be added by the respondents, the ruralite may not be able to make a distinction.

7. Learned counsel for the respondents argued that the name Nikka Mal Pyare Lal Jain was being used by the respondents for their ice factory, diesel locomotive business and textile business, therefore, they could not be stopped from venturing into jewellery under the same name and style. It was also argued that in Chandigarh and other places, there are jewellers with the name of Nikkamal included for example Nikka Mal Babu Ram in Chandigarh and the appellants being not affected by other jewellers having the name of Nikkamal, they had no right to restrain the respondents from using that name as a part of the name of the business. Learned counsel for the appellants, however, contended that there may be 10/20 other persons running the business under some name and style which may include the word 'NIKKAMAL' but the appellants were not bound to sue all of them because they would have a right to initiate action only against persons due to whose action their business in Ludhiana was being affected.

8. Counsel for the appellants also submitted that they were in the business of jewellery since 1958 and as per the dissolution deed, they retained the goodwill of that business whereas the respondents very recently decided to venture into the fields knowing fully well that they intended to woo the customers of the appellants, because of the use of the word 'NIKKAMAL'. It was also pointed out that in the applications made by the respondents under the Act, on 4.10.2010 and 1.12.2010, it was mentioned by the respondents that their predecessors had been using the title given in the application by way of trade mark since 24.12.1996. The description of the business was given as advertising, administrative management, marketing, exporting, whole sale and retail services relating to gold, diamond and silver jewellery of all kind. This was total lie on the part of the respondents because they were not in the jewellery business under the name and style of M/s Nikka Mal Pyare Lal Jain since 1996. They having not conducted themselves with clean hands, were showing that their intentions were far from clean.

9. Learned counsel for the respondents relied on the judgment delivered by the Supreme Court in Civil Appeal No.7191 of 2014, arising out of SLP (C) No.9942 of 2013, titled as 'Precious Jewels and another Vs. Varun Gems' where it was held that the common surname 'Rakyan' being used by both the parties could not be said to be deceptively similar as rather there was no similarity between them. In that case, one of the parties was doing business in the name and style of 'NEENA AND RAVI RAKYAN' whereas the plaintiff firm was also dealing in jewellery under the name and style of 'Rakyan's Fine Jewellery' in Delhi. The plaintiff filed a suit that the surname 'Rakyan' was being used by the defendants and therefore they should be restrained from carrying on the business under the name and style adopted by them. The facts of the case are similar to those here but the exception or the difference is that in the present

case there was a joint family business earlier which was in partnership and vide dissolution deed dated 31.7.1958, the business was divided and the appellants were to retain the goodwill of the jewellery business under the name of M/s Jamna Dass Nikka Mal while the cloth business and its goodwill were retained by M/s Nikka Mal Pyare Lal. The understanding among the partners, therefore, was that the goodwill of the name of Nikkamal would be used by the appellants for the purpose of jewellery business while the name of Nikkamal would be used by the respondents in the textile business. The agreement between the parties must be respected and, therefore, it can be said that the use of the word 'Nikkamal' by the respondents for the jewellery business surely affected the goodwill of the appellants and it could raise confusion in the mind of the customers that both the business i.e. one under the name of Nikka Mal Jewellers by the appellants and the other under the name of Nikka Mal Pyare Lal by the respondents was the same specially when the shops abutted each other.

10. So far as the other fields of business are concerned i.e. Ice Factory and the locomotive business, the appellants are not concerned with those as the appellants are not into those fields. Also the agreement between the parties was regarding jewellery business on the one hand and textile business on the other. If the appellants had entered the textile business under a similar name, then obviously the respondent would have got the pinch of it and they would warn the appellants not to carry on the textile business by using the word 'Nikkamal' in it. The very use of the word 'Nikkamal' can give rise to confusion and deception in the mind of anybody for that matter because even this Court could not stop from making a query from the appellants whether the jewellers Nikka Mal Babu Ram, Chandigarh were also one of the concerns of the appellants. The use of the word 'Nikkamal' in Ludhiana itself is, therefore, very likely to cause

deception/confusion in the mind of the customers, especially people from few years behind who were aware that the family was the same.

11. Learned counsel for the appellants referred to the case reported as Prakash Roadline Ltd. Vs. Prakesh Parcel Service (P) Ltd 1992 (2) ARBLR 274 (Delhi). Though the matter was decided by a single Judge of High Court of Delhi, the judgment was only to show that the use of word 'Prakash' by the parties was taken to be deceptively similar though the entire name of the appellant was Prakash Roadline Ltd. and that of the respondent was Prakash Parcel Service (P) Ltd.

12. The other judgment relied on by learned counsel for the appellants was Mahendra and Mahendra Paper Mills Ltd. Vs. Mahindra and Mahindra Ltd. 2001IXAD (SC) 472 where one name was Mahendra and Mahendra Paper Mills Ltd. and the other was Mahindra and Mahindra Ltd. It is to be seen by the court as to whether the name used by one party could be deceptively similar to the other so as to pass off or to enable others to pass off the business of one party as that of the other. This point has already been discussed in detail holding that the use of word 'Nikkamal' could result in such pass off or confusion. Also the respondents did not start the business with clean hands because they were earlier in the family business with the appellants and were aware of the trade secrets and also they mentioned in their applications for registration of trade mark that they were in the business since 1996 whereas actually this was the first time when they were starting jewellery business for which trade mark was sought to be registered.

13. The appeal is allowed. The order passed by Additional District Judge, Ludhiana i.e. the impugned order is set aside. The application filed by the appellants under Order 39 Rules 1 & 2 of the Code of Civil Procedure is allowed and the respondents are restrained from infringing the registered trade mark of

the appellants known as `Nikka Mal Jewellers' and from using the trade mark being used by them for the jewellery business. This order shall remain operative till the disposal of the suit.

(NAVITA SINGH)
JUDGE

24.12.2014
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Whether to be referred to reporter: Yes